IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY PETITION No. 203 of 2003
In
COMPANY PETITION No. 205 of 1996

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT - Petitioner(s)
Versus
O.L. OF G.S.T.C. LTD. - Respondent(s)

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Appearance :
MR SN SHELAT, Ld. Senior advocate with MR MG NAGARKAR for Petitioner(s) : 1,
OFFICIAL LIQUIDATOR for Respondent(s) : 1,
MR JS Yadav for Respondent(s) : 1,
MR DS VASAVADA for Textile Labour Association

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 28/12/2006

ORAL JUDGMENT

Present company petition has been filed by the State Government through its Secretary, Industries and Mines Department for an appropriate order directing the Official Liquidator of Gujarat State Textile Corporation

(in liquidation) (hereinafter referred to as “the GSTC”) to transfer and hand over all immovable assets and properties belonging to and owned by the GSTC in respect of its two units namely Bhalakia Mills and New Swadeshi Mills Ltd., the State of Gujarat free from all encumbrances liabilities and charges under section 457(i)(e) of the Companies Act, 1956.

2. The Government of Gujarat issued Ordinance No.18 of 1985 – Gujarat Closed Textile Undertaking Nationalisation Ordinance, 1985. That thereafter, on 27-2-1986, the President of India gave assent and the Gujarat Closed Textile Undertaking Nationalisation Act, 1986 came to be passed. Under section 3(1) of the said Act, all the rights and interest in the specified undertaking in respect of the ownership, possession etc. vests in the State Government. Under section 3(2) of the Act, all the properties' rights vested in the State Government stood transferred to the Corporation i.e. Gujarat State Textile Corporation Ltd. Pursuant to the opinion of the BIFR, an order came to be passed by this Court of winding up of the said Corporation passed in Company Petition No.205 of 1996 with Company Application No. 266 of 1996 and the Official Liquidator attached with this Court was

appointed as Official Liquidator and was directed to take charge and possession of all the properties and assets of the said Corporation. The said winding up order came to be passed on 6-2-19976 and the Bhalakia Mills was shown in the first schedule at item No.3 and the New Swadeshi Mills was shown at item No.4. Thus, pursuant to the order passed by this Court, the Official Liquidator is in charge of all the properties of the GSTC inclusive of the properties of the Balakia Mills and New Swadeshi Mills. So far as the New Swadeshi Mills' properties are concerned, they are forming part of survey No.1399/1, Block NO.716 – Kathavada, admeasuring 2,41,875 sq mtr and Final Plot No.1, T.P. Scheme No.16, admeasuring 98,085 sq mtr situated at Naroda Road, Ahmedabad. So far as the Bhalakia Mills' properties are concerned, they are forming part of Final Plot No.46, T.P. Scheme No.7, admeasuring 53,337 sq mtr situated opposite Anupam Cinema, Khokhara Road, Ahmedabad.

3. It is the contention on behalf of the State Government that the Government of Gujarat is the largest creditor of the company in liquidation to the extent of Rs.827.31 crores. It is also further submitted that the Government of Gujarat is the only contributory of the

GSTC. It has also been further submitted that the Official Liquidator is having Rs.52 crores out of the sale proceeds of the assets realized as on today and that there are no secured creditor of the company, save and except the ICICI Bank. It is also further submitted that the said dues are pre-nationalized but the State Government has entered into negotiation with the ICICI Bank Ltd. However, because of some inter se dispute between their assignee and the bank, the amount is not paid.

4. Shri SN Shelat, learned senior advocate appearing on behalf of the State Government has submitted that the Official Liquidator is in possession of all the lands and properties of the New Swadeshi Mills as well as the Bhalakia Mills being units of GSTC i.e. land bearing survey No.1399/1, Block NO.716 – Kathavada, admeasuring 2,41,875 sq mtr and Final Plot No.1, T.P. Scheme No.16, admeasuring 98,085 sq mtr and so far as the Bhalakia Mills is concerned, it is Final Plot No.46, T.P. Scheme No.7, admeasuring 53,337 sq mtr. It has been submitted that the said lands are lying idle in the custody of the Official Liquidator and these assets are not required to be sold since the Government has undertaken to pay all

the dues of all the creditors as certified and approved by the Official Liquidator. It is also further submitted that the labour dues are already paid. However, there might be some claims of the workers which according to the State Government would be Rs.8.20 crores, which will be deposited to Labour Welfare Fund and as and when there are claims of the workers, the same can be paid from the said fund.

5. An affidavit has been filed on behalf of the State Government affirmed by one Shri R.K. Shah, Under Secretary, Industries and Mines Department, State of Gujarat dated 4-12-2006. It has been submitted in the said affidavit that the present petition was preferred in the year 2003 and the State Government had in the meanwhile preferred Company Application No.250 of 2006 with the prayer to transfer and hand over the land bearing Final Plot Nos.54 and 56, T.P. Scheme No.9 of Sarangpur Cotton Mills and Final Plot No.285 of T.P. Scheme No.16 of Silver Cotton Mills and it was requested to permit the State Government to utilize the said land which are lying idle under the custody of the Official Liquidator for setting up Apparel Parks comprising of the lands purchased by the GIDC and the land in the custody

of the Official Liquidator belonging to Sarangpur Cotton Mills and Silver Cotton Mills, units of GSTC. It is further submitted that the Government of India granted approval to establish special economic zone in the Apparel Park on the land. It is further submitted that this Court by its order dated 17-7-2006 granted the permission as sought for.

It is also further submitted that earlier it was proposed at the time of filing of this petition to establish an apparel park for Exports (APE). Then, Government of India formulated a new scheme namely scheme of Integrated Textile Parks by merging two existing schemes i.e. the Scheme for (APE) and the Textile Centre Infrastructure Development (TCID). It is further submitted that the State Government further reviewed its policy to utilize the lands adjoining to the lands granted by this Court for the purpose of Integrated Textile Park. It is further submitted that the Integrated Textile Park can be set up and developed by the State Government under the Special Economic Zone by merging two schemes i.e. APE and TCID to meet the challenges and take benefits from the Open World Trade in Textile from 2005 onwards. It is further submitted that the State Government has already initiated establishing and

integrated Textile Park on the land of Ambica Mills, Bharat Suryoday Mills, Sarangpur Cotton Mills and Silver Cotton Mills and therefore, now it is not required to establish Textile Park on the land of New Swadeshi Mills and the Bhalakia Mills. It is further submitted that recently the State Government has reviewed the situation and has decided to have the utilization of all the assets of the GSTC Mills on optimum utilization to boosts the economy and employment generation of that area and for the consideration of such various projects, in different areas, Government has constituted a Committee under the Chairmanship of the Chief Secretary of the State and the lands of two mills have been utilized in larger public interest and after due consideration. It is further submitted that a prestigious Public Health Institute at New Delhi, working in the field of public health management, Epidemiology and Reproductive and Child Health is planning to establish five regional centres in India and the representative of Public Health Institute have visited Ahmedabad and have selected location at Kathwada, the land of New Swadeshi Mills near Naroda to construct Western Regional Centre of Public Health Institute. Having regard to the aforesaid public purpose, similarly the land of Bhalakia Mills is required to

establish an Hospital and its related activities. Therefore, it is requested to direct the Official Liquidator to transfer the possession of the lands/properties of the aforesaid two mills to the State Government.

6. It has been submitted on behalf of the State Government that there are report of the Chartered Accountant who was appointed to give a detailed report about financial affairs of the aforesaid two mills. The report indicates the following:

From the report, it is borne out that the Official Liquidator has realized Rs.776 lacs from the sale of part of the assets of the undertaking namely New Swadeshi Mills (NSM). The Official Liquidator has also deposits of Rs.52 crores with the Bank. Particulars of the statement referred to in the report are as under:

i. Rupees 8.20 lacs will have to be deposited to Labour Welfare Fund.

ii. The State Government has already paid the dues of Cotton Corporation of India and dues of BRPL to the extent of Rs.34.26 lacs has been negotiated and it will be paid in short time.

iii. There are no secured creditors of the post-

nationalisation dues.

iv. Dues of the Central Government are of Rs.62569 only.

v. The State Government is the largest creditor of the company.

vi. The State Government is only contributory share holder of the Company. Ultimately, therefore, surplus has to be returned to the State Government. Instead of directing sale of the property, it is in the public interest that the property be transferred to the State Government.

vii. Dues of all the banks and financial institutions of pre and post nationalisation period have been paid except the dues of ICICI bank which has been quantified and agreed by ICICI Bank. That will also be paid in short time.

It is also further submitted that out of the total amount of Rs.9,00,26,544/-, the amount payable is to the extent of Rs.394.84 lacs to the outside creditors inclusive of the dues under the State Government guarantee of Rs.246.73 lacs. Therefore, excluding the said amount due and payable is Rs.148.10 lacs. An undertaking is given on behalf of the State Government that the State Government shall make payment to the

creditors of the company if the Official Liquidator were to verify the claim and therefore, it is requested to allow the present petition and direct the Official Liquidator to hand over the custody and possession of the properties of the aforesaid two mills free from all encumbrances which is needed by the State Government for public purpose. Shri Shelat, learned Senior advocate has relied upon the order passed by the learned Single Judge of this Court dated 17-7-2006 passed in Company Application No.250 of 2006 in Company Petition No.205 of 1996 by which the learned Single Judge of this Court has allowed the aforesaid application and has directed the Official Liquidator to hand over the possession of immovable properties of the Sarangpur Cotton Mills and Silver Cotton Mills which was needed by the State Government for Apparel Park.

7. The Official Liquidator has filed its report. It has been submitted in the report that the Official Liquidator is in charge of all the properties of the company in liquidation and the properties of the company in liquidation are required to be sold by the Official Liquidator/ Sale Committee and after selling the properties of the company in liquidation and after the

amount is realized, the same is required to be paid to the creditors of the company in liquidation. Therefore, the Official Liquidator has opposed the present company petition. It is submitted that possession of only two properties are sought by the State Government and considering the provisions of sections 528 to 530 of the Companies Act read with the Companies (Court) Rules, 1959, the assets of the company chosen by the applicant cannot be transferred and handed over to the applicant on the basis of set off to the exclusion of other various classes of the creditors.

8. Shri DS Vasavada, learned advocate appearing on behalf of the Textile Labour Association (TLA)has submitted that the TLA and the workers would not have any objection in granting the aforesaid relief. However, he has requested that in stead of depositing the amount of Rs.8.20 lacs with the Labour Welfare Fund, the same be retained with the Official Liquidator in a separate fixed deposit, so that as and when there are any claims of the workers, the said can be paid from the said funds instead of approaching the Labour Welfare Fund, as it takes time to approach the Labour Welfare Fund. It is also further submitted that when the State Government has undertaken

that in future, there is any claim of the workers of the units of GSTC Limited (in liquidation), the same shall be paid by the State Government on certification by the Official Liquidator within a period of two weeks, they have no objection in allowing the present petition.

9. Heard the learned advocates appearing on behalf of the parties.

10. At the outset, it is required to be noted that identical question came to be considered by this Court in Company Application No.250 of 2006, whereby the learned Single Judge of this Court by its order dated 17-7-2006 directed the Official Liquidator to hand over the possession of properties of Sarangpur Cotton Mills as well as Silver Cotton Mills(units of GSTC Limited) which were needed for public purpose. It is also required to be noted that the Government of Gujarat is the largest creditor of the company in liquidation to the extend of Rs.827.31 crores. That the Government of Gujarat is the only contributory of the GSTC. The Official Liquidator is already having a fund of approximately Rs.52 crores out of the sale proceeds of the assets realized as on today. It appears that there are no secured creditors of the

company, save and except the ICICI Bank and the State Government has undertaken to settled the dues of the ICICI Bank and to pay the same directly to the ICICI Bank and/or its assignee. The State Government has also undertaken to deposit Rs.8.20 lacs towards future claims of the workers of the company in liquidation. The State Government has also undertaken that in future, over and above the aforesaid amount of Rs.8.20 lacs, if there are any further claims of the workers, in that case, the State Government will be liable to pay the same to the concerned workman on proper certification by the Official Liquidator. The State Government has also undertaken that if there are any other claims of the other creditors, in that case, on proper verification and certification by the Official Liquidator, the State Government will make the payment to such creditors also. Now in view of the above, there shall not be any objection in handing over and or transferring the possession of the properties of the Bhalakia Mills and New Swadeshi Mills which is needed by the State Government for public purpose.

11. It is required to be noted that the Official Liquidator who is in possession of the properties in question has to perform his duties for the benefit of the

company and its creditors. The Official Liquidator is required to take care of the interest of the creditors. The Official Liquidator is required to sell the properties of the company in liquidation under supervision of this Court and after having realized the amount, the same is to be distributed amongst the secured creditors and other creditors as required under sections 528 to 530 of the Act. In the present case, the State Government who is the largest creditor as well as the contributory has approached this Court for getting some of the properties of the company in liquidation which is needed by them on aforesaid undertaking i.e. to make the payment to all the creditors (if any) inclusive of the workers. Under the circumstances, the objection on the part of the Official Liquidator cannot be sustained and is required to be overruled.

12. For the reasons as stated above, the Official Liquidator of GSTC Limited (in liquidation) is directed to hand over the custodian possession of the properties of the New Swadeshi Mills and the Bhalakia Mills i.e. land bearing survey No.1399/1, Block NO.716 – Kathavada, admeasuring 2,41,875 sq mtr and Final Plot No.1, T.P. Scheme No.16, admeasuring 98,085 sq mtr and so far as the

Bhalakia Mills is concerned, it is Final Plot No.46, T.P. Scheme No.7, admeasuring 53,337 sq mtr within a period of two weeks from today subject to following terms and conditions;

1. The State Government to deposit Rs.10 lacs with the Official Liquidator towards the future liabilities of the workers, if any and the Official Liquidator is directed to keep the said amount in a separate fixed deposit and as and when there is a claim of any of the workers of the company in liquidation, the same shall be paid by the Official Liquidator on proper verification and subject to the order that may be passed by this Court from the aforesaid fixed deposit.
2. Over and above the aforesaid amount of Rs.10 lacs, if there are any claims of the workers of the company in liquidation in future, in that case, the State Government to pay the same to the concerned workman on proper identification, verification and certification by the Official Liquidator within a period of three weeks from such a certification by the Official Liquidator.
3. The State Government to clear/pay the dues of the ICICI Bank Limited and to resolve the dispute with regard to the dues of the ICICI Bank and to make the payment to

the ICICI Bank and/or its nominee. Thus, so far as dues of the ICICI Bank are concerned, the same shall be cleared and paid by the State Government.

4. The State Government to clear the dues of the Central government.

5. So far as the dues of the other creditors are concerned, the Official Liquidator to pay the dues to the said creditors after proper verification and after obtaining appropriate order from this Court, out of the fund already available with the Official Liquidator (Rs.52 crores). If, there is any shortfall, the State Government to pay and clear the dues of such creditors on proper verification and certification by the Official Liquidator and it will be the responsibility and liability of the State Government to clear the dues of such creditors immediately.

6. The State Government to utilize and use the aforesaid land for the public purpose only.

13. With the above directions, the present company petition is allowed. Liberty to approach this Court by either parties in case of difficulty. No costs.

(M.R.SHAH,J.)

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